

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DIANE YATAURO, JUDITH A. JACOBS,  
KEVAN ABRAHAMS, ROBERT  
TROIANO, JR., JUDI BOSWORTH,  
WAYNE H. WINK, JR. and DAVID  
DENENBERG, individually, as duly  
registered voters of the County of Nassau,  
and in their capacity as members of the  
Nassau County Legislature,

Plaintiffs,

-against-

EDWARD P. MANGANO, in his official  
capacity as Nassau County Executive;  
PETER J. SCHMITT, JOHN J. CIOTTI,  
DENISE FORD, FRANCIS X. BECKER, JR.,  
HOWARD J. KOPEL, VINCENT T.  
MUSCARELLA, RICHARD J. NICOLELLO,  
NORMA L. GONSALVES, JOSEPH V.  
BELESI, DENNIS DUNNE, SR., and ROSE  
MARIE WALKER, individually and in their  
capacity as members of the Nassau County  
Legislature;  
WILLIAM J. MULLER, in his capacity as  
Clerk of the Nassau County Legislature;  
NASSAU COUNTY LEGISLATURE;  
COUNTY OF NASSAU; and  
WILLIAM T. BIAMONTE and LOUIS G.  
SAVINETTI, as the commissioners  
constituting the Nassau County Board of  
Elections,

Defendants.

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**HURLEY, District Judge:**

Plaintiffs originally filed the instant action in State Supreme Court, Nassau County,  
challenging the Nassau County Legislature's adoption of a plan to redistrict the County's

**ORDER**  
**11 CV 3080 (DRH)(WDW)**

nineteen legislative districts.<sup>1</sup> On June 27, 2011, defendant Louis G. Savinetti removed the case to this Court, citing a federal question as the basis for subject matter jurisdiction, and the case was assigned to me. That same day, at approximately the same time, defendant County of Nassau filed a separate notice of removal in this Court for the same state court case. That notice of removal was given a different docket number, 11-CV-3079, and was assigned to Judge Feuerstein. Days later, on June 30, 2011, plaintiffs filed a request in each of these two removal actions seeking an order to show cause why the cases should not be remanded back to state court. (Docket No. 2.) That request is now before the Court.

It has come to the Court's attention that Judge Feuerstein has issued an Order *sua sponte* remanding her case back to state court for lack of subject matter jurisdiction, concluding, *inter alia*, that "[a]lthough plaintiffs refer to the United States Constitution in their [Second Amended Petition], their claims clearly arise under state law and the substance of their allegations do not raise any substantial federal question." *Yatauro, et al. v. Mangano, et al.*, No. 11-CV-3079(SJF)(AKT)(E.D.N.Y. July 1, 2011). A copy of the Order is attached hereto.

This Court has reviewed Judge Feuerstein's Order. The questions, facts, and parties presented here are identical to those presented to Judge Feuerstein and, indeed, involve the very same state court case. Primarily for the reasons articulated in Judge Feuerstein's Order, the Court *sua sponte* remands this case to state court for lack of subject matter jurisdiction. *See*, in addition to Judge Feuerstein's Order, *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 10-11 (1983) ("For better or worse, under the present statutory scheme as it has existed since 1887, a defendant may not remove a case to federal court unless the plaintiff's complaint establishes that the case arises under federal law. A right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the

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<sup>1</sup> The state court action was assigned index number 6898/2011.

plaintiff's cause of action.”)(citation and quotes omitted); *County of Nassau v. New York*, 724 F. Supp. 2d 295, 302-04 (E.D.N.Y. 2010); *Caggiano v. Pfizer, Inc.*, 384 F.Supp.2d 689, 690 (S.D.N.Y. 2005).

The Clerk of Court is directed to close this case and, pursuant to 28 U.S.C. § 1447(c), to mail a certified copy of this Order to the Clerk of the Supreme Court of the State of New York, County of Nassau.

SO ORDERED.

Dated: Central Islip, New York  
July 5, 2011

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Denis R. Hurley  
Unites States District Judge